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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

SANTIAGO MEZA MEZA,

Defendant and Appellant.

E060426

(Super.Ct.No. INF1100475)

OPINION

APPEAL from the Superior Court of Riverside County. Richard A. Erwood,
Judge. Affirmed as modified.

Gideon Margolis, under appointment by the Court of Appeal, for Defendant and
Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General,
Arlene A. Sevidal and Collette C. Cavalier, Deputy Attorneys General, for Plaintiff and
Respondent.

A jury found defendant and appellant Santiago Meza Meza guilty of possession of
methadone and heroin (Health & Saf. Code, § 11350, subd. (a); counts 1 & 3,

respectively);¹ possession of methamphetamine for sale (§ 11378; count 2); and possession of paraphernalia (§ 11364.1; count 4).² Defendant was thereafter placed on probation for a period of 36 months on various terms and conditions. On appeal, defendant contends (1) the trial court violated his due process rights by refusing to order the disclosure of the identity of the confidential informant without conducting an evidentiary hearing; and (2) the \$50 fine imposed on him pursuant to section 11379.6, subdivision (a), was improper because he was neither charged with nor convicted of manufacturing drugs. We agree with the parties that the \$50 fine imposed pursuant to section 11379.6, subdivision (a), must be stricken, and reject defendant's remaining contention.

I

FACTUAL AND PROCEDURAL BACKGROUND³

A. *The Confidential Informant*

Between December 7 and December 17, 2010, Riverside County Sheriff's Deputy Alicia Lopez, who was assigned to the Coachella Valley Narcotics Task Force, met with a confidential informant to make a controlled purchase of methamphetamine from a

¹ All future statutory references are to the Health and Safety Code unless otherwise stated.

² The trial court later dismissed count 3 in the interest of justice and amended count 1 to include both methadone and heroin.

³ The factual background regarding the confidential informant is taken from the hearing on defendant's motion to quash the search warrant and from the search warrant and affidavit in support of the search warrant.

residential apartment located at 65-100 Date Palm Street, #B102, in the city of Mecca, county of Riverside (Date Palm address). Sometime earlier, the informant had told Deputy Lopez that a man named “Santiago” sold methamphetamine from the residence. The informant also notified the deputy that the informant had purchased methamphetamine approximately two times within a month from “Santiago.”

During the controlled buy, Deputy Lopez and other law enforcement maintained surveillance while the informant met with “Santiago” outside the residence. Via an audio monitoring device, Deputy Lopez heard the informant and “Santiago” negotiate the purchase of methamphetamine. Deputy Lopez also observed the informant give “Santiago” task force funds in exchange for a plastic baggie containing methamphetamine.

The informant described “Santiago” as a Hispanic male, 5’ 7” tall, weighing 170 pounds, with brown hair, and around 65 years old. The informant told Deputy Lopez that he or she had known “Santiago” for a few months but did not know his last name.

The informant also advised Deputy Lopez that between December 31, 2010, and January 6, 2011, the informant had accompanied a friend to purchase methamphetamine from “Santiago” at the Date Palm address and had witnessed “Santiago” give methamphetamine to the friend in exchange for money. The informant further advised Deputy Lopez that during this same time period, the informant had observed “Santiago” driving a new car and that the informant had seen the car parked at the Date Palm address. The informant provided the deputy with the license plate number of the vehicle.

Deputy Lopez ran the license plate number of the vehicle through dispatch and discovered that it was registered to defendant, Santiago Meza Meza. When Deputy Lopez showed the informant defendant's California Department of Motor Vehicle's (DMV) photo, the informant positively identified defendant as the same "Santiago" the informant had purchased methamphetamine from. Defendant's DMV driver's license card noted defendant's date of birth as July 25, 1957. Deputy Lopez described defendant as weighing 170 pounds and being 5'5" tall.

On January 11, 2011, Deputy Lopez obtained a search warrant to search the residence at the Date Palm address.

B. *Facts of the Offenses*

On January 14, 2011, Coachella Valley Narcotic Task Force officers executed the search warrant at the subject residential apartment located at the Date Palm address. The officers contacted defendant and his uncle Simon Meza inside the apartment. When asked if there were any drugs in the residence, defendant responded that there was heroin located inside his jacket in the bedroom.

Inside the jacket pocket, Deputy Lopez found three bindles of methamphetamine (one the size of a golf ball), a small baggie of heroin, approximately 29 syringes, a methamphetamine pipe, and a burned spoon. Deputy Lopez also found defendant's expired identification card inside the jacket. The search of the residence revealed 45 methadone hydrochloride pills without prescriptions, \$750 in cash, and a pocket-size scale. At the time the items were located, defendant said "Son mios," which means,

“That’s mine” in Spanish. The three methamphetamine bindles together weighed 18.5 grams and the heroin weighed 0.64 grams.

C. *Procedural Background*

Following a preliminary hearing, on December 3, 2012, defendant was charged with possession of methadone and heroin (§ 11350, subd. (a); counts 1 & 3, respectively); possession of methamphetamine for sale (§ 11378; count 2); and possession of paraphernalia (§ 11364.1; count 4).

On March 9, 2012, defendant filed a motion for an order compelling disclosure of the identity of the confidential informant or, alternatively, dismissal of the information. Defendant argued that the informant was a material witness and could possibly provide exonerating evidence, since the informant had never ruled out defendant’s uncle, who also lived at the residence, as a possible suspect. Defendant also asserted that because the informant was never shown a photo of defendant’s uncle, the informant might have identified defendant’s uncle if given an opportunity to view him, since there was a possibility defendant and his uncle looked alike. Defendant maintained that the nondisclosure of the identity of the confidential informant deprived him of a fair trial.

On March 19, 2012, the People filed an opposition, relying on the privilege against disclosure pursuant to Evidence Code section 1041. The People argued the informant was not a material witness since the informant had fairly given an accurate description of defendant; the informant had positively identified defendant as the person he/she had purchased methamphetamine from when shown the DMV photo of defendant; the informant had never stated another person was present during the controlled buy; the

informant was not present during the search; and the bulk of the narcotics were found in defendant's jacket during the search.

On March 26, 2012, after hearing argument by the parties, the trial court denied the motion.

On December 4, 2013, the jury found defendant guilty as charged. At the sentencing hearing, the trial court dismissed count 3 in the interest of justice and amended count 1 to include both methadone and heroin. The court then suspended imposition of the sentence and granted defendant 36 months of formal probation, with terms and conditions that included service of 180 days in county jail and payment of various fines and fees. The court awarded defendant 78 days of presentence custody credit. This appeal followed.

II

DISCUSSION

A. *Denial of Disclosure of Confidential Informant*

Defendant argues that the trial court violated his due process rights by denying his motion to compel disclosure of the identity of the confidential informant without a hearing. As such, he argues the matter must be remanded for an in camera hearing pursuant to Evidence Code section 1042, subdivision (d).

Evidence Code section 1041 provides generally that a public entity has the privilege to refuse to disclose the identity of a person who has furnished information purporting to disclose a violation of law. (Evid. Code, § 1041, subd. (a).) Disclosure of a confidential informant's identity is not required because it is deemed to be against the

public interest if the need to preserve the informant's confidentiality outweighs the need for disclosure in the interest of justice. (Evid. Code, § 1041, subds. (a)(2), (b)(1).) When a party in a criminal proceeding demands disclosure of a confidential informant's identity on the ground that the informant is a material witness on the issue of guilt, the court must conduct a hearing at which all parties may present evidence on the issue of disclosure. (Evid. Code, § 1042, subd. (d).) The People may request an in camera hearing under certain circumstances. The trial court has no authority to order disclosure of the informant's identity or dismiss the criminal proceedings unless it concludes that there is a reasonable possibility that nondisclosure might deprive the defendant of a fair trial. (Evid. Code, § 1042, subd. (d); see *People v. Oppel* (1990) 222 Cal.App.3d 1146, 1152; see *People v. Lawley* (2002) 27 Cal.4th 102, 159 (*Lawley*); *Price v. Superior Court* (1970) 1 Cal.3d 836, 842-843.)

On appeal, the standard of review of the trial court's determination that the confidential informant was not a material witness and its resulting decision not to hold an in camera hearing to examine that informant is unsettled. It may be one for an abuse of discretion or it may be de novo review. (*People v. Gordon* (1990) 50 Cal.3d 1223, 1245-1246 (*Gordon*), disapproved on another ground in *People v. Edwards* (1991) 54 Cal.3d 787, 835; see *People v. Hobbs* (1994) 7 Cal.4th 948, 971 [federal courts review for abuse of discretion].) Our Supreme Court has intentionally left open the question of which standard of review to apply when analyzing a trial court's ruling on a defendant's motion to disclose the identity of a confidential informant. (*Gordon, supra*, 50 Cal.3d at

pp. 1245-1246.) In *Gordon*, the Supreme Court wrote that the abuse of discretion or independent standards of review may be applicable to such a ruling. (*Ibid.*)

Regardless of which standard of review we should apply, we find that the trial court did not err in finding that the confidential informant could not offer material evidence on defendant's guilt, by declining to hold an in camera hearing, or by denying the motion to disclose the identity of the confidential informant. (See, e.g., *Gordon, supra*, 50 Cal.3d at p. 1246.) The defendant bears the burden of making a sufficient showing that the confidential informant has information that may be material to the defendant's guilt such that an in camera examination of the confidential informant is appropriate. (*Ibid.*; *People v. Oppel, supra*, 222 Cal.App.3d at p. 1152; see *People v. Fried* (1989) 214 Cal.App.3d 1309, 1314-1315 (*Fried*); *People v. Lee* (1985) 164 Cal.App.3d 830, 835; *Lawley, supra*, 27 Cal.4th at pp. 159-160; Evid. Code, § 1042, subd. (d).) The defendant meets the burden of demonstrating materiality when he or she offers some evidence that a reasonable possibility exists that the confidential informant could give evidence on an issue of guilt that might result in the defendant's exoneration. (*Lawley, supra*, 27 Cal.4th at p. 159; *Gordon, supra*, 50 Cal.3d at p. 1246; *People v. Luera* (2001) 86 Cal.App.4th 513, 525-526; *People v. Austin* (1994) 23 Cal.App.4th 1596, 1610, disapproved on another point in *People v. Palmer* (2001) 24 Cal.4th 856, 861, 867; *People v. Oppel, supra*, 222 Cal.App.3d at p. 1152; *People v. Lee, supra*, 164 Cal.App.3d at p. 835.)

The existence of a reasonable possibility is determined on a case-by-case basis. (*People v. Austin, supra*, 23 Cal.App.4th at p. 1610.) However, this showing "must rise

above the level of *sheer or unreasonable speculation*” to the relatively low level of reasonable possibility. (*People v. Luera, supra*, 86 Cal.App.4th at p. 526.) Thus, the defendant must show that the confidential informant was in a position to perceive “ ‘the commission or the immediate antecedents of the alleged crime[s].’ ” (*Fried, supra*, 214 Cal.App.3d at p. 1315; accord, *People v. Hardeman* (1982) 137 Cal.App.3d 823, 828; *Williams v. Superior Court* (1974) 38 Cal.App.3d 412, 423 (*Williams*).) The defendant will have difficulty meeting this burden of proof when the confidential informant was not a percipient witness to the crime charged. In such circumstances, the possibility that the confidential informant could offer material evidence exonerating the defendant is typically speculative. (*People v. Austin, supra*, 23 Cal.App.4th at p. 1610; *People v. Lee, supra*, 164 Cal.App.3d at pp. 836-837 [confidential informant was not material witness on issue of possession when overwhelming evidence of possession already established]; see *People v. Luera, supra*, 86 Cal.App.4th at p. 526.)

When a defendant is charged with constructive possession of narcotics imputed by police discovery of contraband in a specific location, the disclosure of a nonparticipant who was not an eyewitness to the charged crime is required only if the confidential informant has experienced a very recent observation of contraband at that location at a time at which the defendant was not or may not have been present. (*Fried, supra*, 214 Cal.App.3d at p. 1316.) A lapse of five days between a confidential informant’s observations and the search revealing possession of narcotics has been held to render the confidential informant’s observation insufficiently recent to justify disclosure of his or

her identity. In these circumstances, concealment of the confidential informant identity could not possibly deprive the defendant of a fair trial. (See *ibid.*)

Another factor tending to make the proffered evidence speculative is the passage of time between the observations that the confidential informant made and a later-committed offense. (See *People v. Austin, supra*, 23 Cal.App.4th at p. 1610.) Defendant was charged with possessory offenses, not with the sale of narcotics. Illegal possession of drugs is an immediate offense. The majority of the charges against him were based on constructive possession of methamphetamine, heroin, and drug paraphernalia found inside defendant's jacket pocket, which defendant admitted belonged to him.⁴ Defendant's identification card was also found inside his jacket, and defendant informed the officers that there was heroin inside his jacket in the bedroom when asked by the officers if there were any drugs in the house. The charges were thus based on circumstances occurring at or near the time of arrest. When no facts establish the presence of the confidential informant at the scene of the search and arrest, there is not a reasonable possibility that he or she could offer evidence bearing on the defendant's guilt or innocence of the possession charge. (See, e.g., *Fried, supra*, 214 Cal.App.3d at pp. 1316-1317.)

In *Fried*, the court held that, although an in camera hearing had been held, there in fact had been no need for such a hearing as to whether the identity of a confidential

⁴ The search of the residence also uncovered 45 methadone pills without a prescription; however, the court later dismissed count 3 (possession of heroin) and amended count 1 to include both possession of methadone and heroin.

informant should be disclosed when the defendant had not shown that the informant would “be in a position to give possible testimony which will aid the defendant on the issue of guilt.” (*Fried, supra*, 214 Cal.App.3d at pp. 1314-1315.) The defendant had argued on information and belief in his motion for disclosure that the informant might have been on the premises within 24 hours of the defendant’s arrest and might have left contraband on the living room table where it was found in a search of defendant’s house. (*Id.* at p. 1312.) The court noted, however, that “[t]he assertion that the informant may have been on the premises shortly before the search and planted the contraband where it would later be uncovered by the police was supported by nothing more than counsels’ ‘information and belief.’ It was never once suggested that this hypothesis had any basis in fact nor that defendants believed it to be true.” (*Id.* at p. 1315.) The court further noted that “the record conclusively demonstrates that the informant was a nonparticipant, noneyewitness to the charged offense of constructive possession of cocaine” because the evidence established that the “informant’s observations occurred at least five days prior to [the] search and that defendants were dealing in narcotics at that time.” (*Id.* at p. 1316.)

In this case, there is no evidence that the confidential informant was present at the search and arrest, or that he or she had recently been at the Date Palm address. Twenty-eight days had elapsed between the confidential informant’s controlled buy of methamphetamine from defendant and defendant’s constructive possession of the large amount of methamphetamine, small amount of heroin, and drug paraphernalia that were found inside defendant’s jacket pocket, and the 45 methadone pills found inside

defendant's apartment. And, eight days had lapsed between the confidential informant witnessing a friend purchase methamphetamine from defendant and defendant's constructive possession of the drugs and drug paraphernalia. Further, the confidential informant never informed Deputy Lopez that another person was present at defendant's residence when the buys were made. Moreover, the confidential informant had given a fairly accurate description of defendant and had positively identified defendant as the person he or she purchased narcotics from when shown defendant's DMV photo. This evidence along with the lapse of time contributes to our conclusion that it was not reasonably possible that the confidential informant could have offered material evidence on the issue of guilt on the possession charges.

On similar facts, *People v. Alderrou* (1987) 191 Cal.App.3d 1074 (*Alderrou*) and *People v. Dimitrov* (1995) 33 Cal.App.4th 18 (*Dimitrov*) found the trial court did not abuse its discretion in concluding the confidential informant was not a material witness. While the informant(s) made a controlled buy and had previously witnessed or participated in a drug transaction with the defendants, the defendants in *Alderrou* and *Dimitrov* were not prosecuted on evidence of a particular sale or sales but, instead, each was prosecuted based upon evidence of possession at the time of arrest, that is, "on the quantity of cocaine found in [the defendant's] possession combined with the scales, cutting compound, and other apparatus and supplies he also possessed which are typically associated with cocaine intended for sale rather than for personal use." (*Alderrou, supra*, 191 Cal.App.3d at pp. 1076-1077, 1080-1083 [quote on p. 1081]; *Dimitrov, supra*, 33 Cal.App.4th at pp. 24, 29-31.) The *Alderrou* court noted that "it is important to bear in

mind what offense appellant was found to have committed. He was charged and convicted of possessing cocaine for sale in violation of Health and Safety Code, section 11351. He was not convicted of selling cocaine or transporting it or giving it away. [The defendant] was not being charged nor was he convicted of the particular sale—or any sale—which he may have made to the confidential informant or which the confidential informant may have witnessed.” (*Alderrou*, at p. 1081.)

The same is true here. Defendant was not prosecuted on the evidence of the sale to the confidential informant 28 days earlier or any other sale or sales but instead on the evidence of possession when the residence was searched. As in *Alderrou*, we “would have to engage in wild speculation about convoluted improbable plots to come up with a scenario which would produce testimony from this confidential informant tending to exonerate” defendant of the offenses of which he was convicted. (*Alderrou*, *supra*, 191 Cal.App.3d at p. 1083.) As in *Fried*, the confidential informant’s observations took place too many days prior to the search for the informant to have been a participant or an eyewitness. (*Fried*, *supra*, 214 Cal.App.3d at p. 1316.)

Defendant asserts that more than one person had access to and control over defendant’s apartment and that even considering defendant’s admission, “this did not establish he possessed all of the drugs,” or that he had exclusive control over the entire apartment where the drugs were found. Defendant relies on *Goodlow v. Superior Court* (1980) 101 Cal.App.3d 969 (*Goodlow*), in which the trial court refused the defendant’s request to disclose the name of an informer who told the police he was involved with drugs, to support his position. (*Id.* at p. 972.)

In *Goodlow*, *supra*, 101 Cal.App.3d 969, the court stated: “In cases involving constructive possession, where the defendant has based his right to disclosure of the informant’s identity on a theory that the informant might testify that others possessed sole dominion and control over the contraband, the courts have compelled disclosure if there were other persons present at the time the informant made his observations. [Citations.] Here, the People argue that the informer’s observations 11 days prior to the search and arrest are too stale to be relevant to the question of defendant’s guilt. While the time between the informant’s observations and the factual basis for the charge is one of the factors to be considered in determining whether the informant is a material witness [citations], and while in most of the cases in which an informant has been deemed a material witness the time lapse has been shorter, obviously time is only one factor to be considered, and its significance must be judged in relation to the facts of the particular case. We find the facts of this case to support a reasonable possibility that the informant might provide evidence bearing upon the issue of petitioner’s guilt.” (*Id.* at p. 976, italics omitted.) The appellate court found the procedures outlined in Evidence Code section 1042, subdivision (d), applied to probation revocation proceedings, and granted the defendant’s writ petition directing the trial court to conduct an in camera hearing. (*Goodlow*, at p. 977.)

Defendant’s reliance on *Goodlow* is misplaced. The record in this case shows that the confidential informant was a nonparticipant, non-eyewitness to the charged offenses. In other words, an analysis of this case demonstrates that the facts do not support a reasonable possibility that the confidential informant might provide evidence exonerating

defendant or on the issue of defendant's guilt. The People were not relying on the confidential informant's buys or testimony to prove the charged offenses against defendant. The element of possession requires proof that the defendant exercised dominion and control over the item possessed. (*People v. Cordova* (1979) 97 Cal.App.3d 665, 669.) Any dominion and control issues were resolved when the officers found the drugs and paraphernalia, along with defendant's identification card, inside defendant's jacket, which defendant admitted belonged to him. This evidence may allow a trier of fact to infer that defendant also had possession of the methadone pills found within the apartment. (See *People v. Arline* (1970) 13 Cal.App.3d 200, 202, disapproved on another ground in *People v. Hall* (1986) 41 Cal.3d 826, 834.) This is not a case in which drugs were found in plain view and an issue arose about who possessed them. (See *Honore v. Superior Court* (1969) 70 Cal.2d 162, 166, 169.) Moreover, the confidential informant had positively identified defendant as the person he or she had purchased methamphetamine from. In this matter, the large amount of methamphetamine, heroin, and drug paraphernalia were found inside defendant's jacket. We may infer dominion and control of the methadone pills found within the apartment.

Even if he could establish that his uncle had access to his jacket and was present during the buys, defendant also had access to his jacket and the apartment. Even if the drugs found belonged to his uncle, defendant also had constructive possession of the methamphetamine, heroin, and drug paraphernalia contained inside his jacket and the methadone pills found within the apartment because the jacket was his and he had control and access to the apartment. It is possible for two persons to simultaneously have

possession of property. (See *People v. Jones* (1996) 42 Cal.App.4th 1047, 1053-1054.)

As the evidence defendant sought to elicit from the confidential informant could not have negated the essential element of his constructive possession of the methamphetamine, heroin, and drug paraphernalia found inside his jacket pocket, and the methadone pills found within the residence, we conclude that the confidential informant would not have been a material witness on the issue of guilt.

In his reply brief, defendant relies on *Williams*, supra, 38 Cal.App.3d 412 and *People v. Tolliver* (1975) 53 Cal.App.3d 1036 (*Tolliver*) to support his position that a remand is required for an in camera hearing because there is “clearly a possibility that the informant could give testimony which might exonerate [defendant].” Defendant believes that the confidential informant might have been able to testify that he or she “actually made the purchase from” defendant’s uncle rather than from defendant, “given the possible physical resemblance.”

In *Williams*, the police received information from an informant that the defendant and another subject were dealing heroin from a certain address, that the informant had been present at the address between the previous day and the day of the report and had seen a large quantity of heroin at the residence, which the defendant and the other subject were selling. The informant had also been present when both subjects were preparing heroin in packages to sell. (*Williams*, supra, 38 Cal.App.3d at p. 416.) As it was evident the informant claimed to have personally witnessed the drug activity, the court held disclosure was required, stating: “Where the evidence indicates that the informer was an actual participant in the crime alleged, or was a nonparticipating eyewitness to that

offense, ipso facto it is held he would be a material witness on the issue of guilt and nondisclosure would deprive the defendant of a fair trial. In such circumstances, . . . the proximity in time and space of the informer's relationship to the alleged crime readily tips the scales against the public interest in protecting the flow of information to law enforcement officials. [Citations.]" (*Id.* at p. 420.) The court expressly contrasted the situation in which the informant was not a participant or eyewitness: "However, when the informer is shown to have been neither a participant in nor a nonparticipant eyewitness to the charged offense, the possibility that he could give evidence which might exonerate the defendant is even more speculative and, hence, may become an unreasonable possibility." (*Id.* at pp. 420-421.)

This case plainly falls into the second category described in *Williams*. There was no indication in the record in this case that the confidential informant was a participant in or material eyewitness to the charged offenses. The record did not indicate why the informant believed defendant might be involved, what defendant's role may have been, or whether others also may have been involved. As previously noted, the confidential informant had positively identified defendant as the person he or she had purchased methamphetamine from when shown a photo of defendant. In addition, the confidential informant had never stated another person was present during the buys. Under these circumstances, there was not a reasonable possibility that the informant would be able to provide exonerating evidence.

Tolliver, *supra*, 53 Cal.App.3d 1036 is distinguishable on the same basis as *Williams*. The informant in *Tolliver* stated that two subjects, whom he described, were

selling heroin from their residence; that he had been there on numerous occasions and had personally purchased heroin from each of the subjects on separate occasions; and that he had observed the subjects selling narcotics and dangerous drugs to other people who came to the residence. (*Id.* at pp. 1039-1040.) After providing this information, the informant was taken by the police to the premises, where he entered the premises and later emerged with a balloon that contained heroin. The informant said he had purchased the heroin from one of the subjects, while the other oversaw the transaction. (*Id.* at p. 1040.)

In view of the informant's personal contact and dealings with the subjects, the court not surprisingly concluded it was proper to require disclosure of the informant. The court observed that the informant might testify that neither subject was in possession of the contraband found on the premises, but that the contraband had come from a third person in the premises who was in control of the contraband. (*Tolliver, supra*, 53 Cal.App.3d at p. 1046.) Hence, there was a reasonable possibility the informant could give testimony favorable to the defendants, and disclosure was required. (*Id.* at p. 1048.) There was no comparable evidence in this case that the informant had any personal contact or dealings with anyone else other than defendant, or that anyone else was present during the informant's buys of methamphetamine from defendant. Moreover, the majority of the drugs and paraphernalia were found inside defendant's jacket, along with his identification card. There is nothing in this record to indicate that the informant might testify defendant was not in constructive possession of the contraband.

Accordingly, whether we review the trial court's decision for an abuse of discretion or we determine anew the materiality question, we conclude that the trial court did not err in denying defendant's motion to disclose the identity of the confidential informant without holding an in camera hearing because there was no reasonable possibility the informant could give evidence that might have exonerated defendant and there was no showing that nondisclosure might deprive defendant of a fair trial. (*Lawley*, *supra*, 27 Cal.4th at p. 159.)

B. *Fine Imposed Pursuant to Section 11379.6, Subdivision (a)*

Defendant contends the trial court erred in imposing a \$50 fine pursuant to section 11379.6, subdivision (a), at the sentencing hearing because he was neither charged with nor convicted of manufacturing drugs. The People correctly concede the error. We also agree.

Subdivision (a) of section 11379.6 provides: "Except as otherwise provided by law, every person who manufactures, compounds, converts, produces, derives, processes, or prepares, either directly or indirectly by chemical extraction or independently by means of chemical synthesis, any controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, five, or seven years and by a fine not exceeding fifty thousand dollars (\$50,000)." This provision "makes it unlawful to engage in the chemical extraction of a substance as part of the process of manufacturing a controlled substance." (*People v. Bergen* (2008) 166 Cal.App.4th 161, 168, citing *People v. Coria* (1999) 21 Cal.4th 868, 874.)

Here, defendant was neither charged with nor convicted of manufacturing or chemically extracting a controlled substance. As such, the trial court erred in imposing the \$50 fine pursuant to section 11379.6, subdivision (a). We will therefore strike the trial court's imposition of the \$50 fine that was ordered pursuant to section 11379.6, subdivision (a).

III

DISPOSITION

The judgment is modified by striking the \$50 fine that was ordered pursuant to section 11379.6, subdivision (a). The clerk of the superior court is directed to prepare an amended minute order of the January 9, 2014 sentencing hearing. As modified, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

KING

J.